

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY SHORT and JUDY SHORT, h/w,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 99-3526
	:	
WCI OUTDOOR PRODUCTS, INC. and	:	
RICKEL HOME CENTER,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

ROBERT F. KELLY, J.

NOVEMBER 2, 2000

Presently before the Court is the Motion of Defendant, WCI Outdoor Products, Inc. ("WCI"), for Summary Judgment against Barry and Judy Short ("Mr. and Mrs. Short" or "Plaintiffs").<sup>1</sup> Mr. and Mrs. Short instituted this product liability action for amputation of a portion of Mr. Short's left foot and his left great toe on June 20, 1997. Plaintiffs claim that design and manufacturing defects in a 22" Poulan Weedeater Lawn Mower ("the lawn mower") manufactured by WCI and purchased by Plaintiffs at Rickel Home Center ("Rickel") caused Mr. Short's injuries. For the reasons that follow, WCI's Motion is granted.

**I. FACTS.**

On the morning of June 20, 1997, Mr. Short mowed his

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<sup>1</sup>All parties agreed to a dismissal with prejudice of Defendant Briggs & Stratton Corporation on June 23, 2000. Defendants Frigidaire Home Products, Inc. and American Yard Products were substituted by Defendant WCI Outdoor Products, Inc. on July 14, 2000.

lawn with the lawn mower.<sup>2</sup> The front lawn had a slope of approximately 30 degrees and Mr. Short, as was his custom, pushed the mower once up the sloped incline from the sidewalk in front of his home to a level section of grass immediately adjacent to his front porch. He mowed the level section, moving parallel to the porch and afterward mowed the slope, working from the top of the slope downward in a diagonal fashion to his right, pulling the mower back up the hill behind him, repeating this diagonal motion across the slope.

At some point during this diagonal mowing process, Mr. Short lost his footing and slid down the slope on his rear end.<sup>3</sup> In an attempt to use his hands to break his fall, he let go of the operator presence control handle of the lawn mower.<sup>4</sup> The next thing Mr. Short remembers is the lawn mower moving down the slope to his right and striking his left foot. As the blade contacted his foot, Mr. Short struck the mower handle in order to engage the "stop control" function and stop the mower engine. He estimates that these events occurred within three seconds and he reached the bottom of the slope before the mower hit him.

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<sup>2</sup>Mr. Short had purchased the lawn mower two years before, in June, 1995, from Rickel. Mrs. Short primarily operated the lawn mower, and Mr. Short only used the lawn mower 6 or 7 times. This was Mr. Short's first use of the lawn mower during the 1997 mowing season.

<sup>3</sup>Mr. Short wore fully laced high-top sneakers with substantial tread wear. Although Mr. Short admits the sneakers were old, he contends they provided him with sufficient traction.

<sup>4</sup>The lawn mower is designed to stop when the operator presence control handle is released.

Mrs. Short testified that shortly before the 1997 accident, she noticed that "the [yellow release bar that controlled the blade-stop function] wasn't as quick as the first year that we owned it." (J. Short Dep. at 15.) After the accident, the Shorts did not use the lawn mower.<sup>5</sup> In order to transport the lawn mower to the Plaintiffs' expert for examination, Mr. Short and Edward Quinn ("Quinn"), a friend, loaded the lawn mower backwards into the back of the Shorts' van. During this loading, the operator presence control bar became caught on the black weather stripping at the top of the van, hit the inside roof of the van and snapped down. As a result, the control bar bent and snapped down toward the front of the mower.<sup>6</sup> Neither Mr. Short nor Mr. Quinn investigated the snapping noise at that time. Upon arrival at the expert's office, however, the operator presence control bar was broken and the cable was severed.

Plaintiffs filed this lawsuit in the Court of Common

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<sup>5</sup>There exist some differences in testimony regarding the location where the lawn mower was stored after the accident. Mrs. Short testified that the lawn mower was stored in their basement. (J. Short Dep. at 36.) Edward Quinn, a friend who helped transport the lawn mower to the Plaintiffs' expert's office, testified that the lawn mower was stored in the open right behind the Short's house, neither in a shed nor an outbuilding. (Quinn Dep. at 54.)

<sup>6</sup>It is unclear when this transport occurred. Mr. Short testified that he transported the lawn mower in December, 1998, yet the Plaintiffs' expert, Richard A. Colberg, testified that he was visited by Messrs. Short and Quinn with the lawn mower on November 26, 1997. For purposes of this Motion, the Court will assume that the transport occurred on November 26, 1997.

Pleas of Delaware County, Pennsylvania on June 18, 1999. WCI removed the case to this Court on July 13, 1999, on the basis of diversity. The Plaintiffs' Complaint contains claims by Mr. Short for Strict Liability (Counts I, IV, VII and X), Negligence (Counts II, V, VIII and XI), and Breach of Warranties of Fitness for a Particular Purpose and Merchantability (Counts III, VI, IX and XII). Mrs. Short's loss of consortium claim comprises Count XIII of the Complaint. The Plaintiffs claim that the lawn mower manufactured by WCI and sold by Rickel was defectively designed, inspected, assembled and manufactured.

## **II. STANDARD.**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 325 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the

pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

### **III. DISCUSSION.**

In a diversity action, the applicable law is the substantive law of the state where the court is sitting, therefore Pennsylvania law governs this case. Wallace v. Tesco Eng'g, Inc., No. 94-2189, 1996 WL 92081, at \*1 (E.D. Pa. Mar. 1, 1996), aff'd, 101 F.3d 694 (3d Cir. 1996)(citation omitted). The Pennsylvania Supreme Court adopted the Restatement (Second) of Torts, section 402(A) ("section 402(A)"), and made it a part of Pennsylvania's substantive law. Webb v. Zern, 220 A.2d 853, 854 (Pa. 1966); Restatement (Second) of Torts § 402(A). Pursuant to section 402(A), a seller of products is "strictly liable for the physical harm caused by a product sold in a defective condition unreasonably dangerous to the user." Jordon by Jordon v. K-Mart Corp., 611 A.2d 1328, 1330 (Pa. Super. 1992)(citing Berkebile v. Brantly Helicopter Corp., 337 A.2d 893, 899 (Pa. 1975)). For section 402(A) liability, the plaintiff must prove that: (1) the product was defective; (2) the defect existed when it left the

hands of the manufacturer; and (3) the defect caused the harm. Ellis v. Chicago Bridge & Iron Co., 545 A.2d 906, 909 (Pa. Super. 1988)(citing Berkebile, 337 A.2d at 898).

**A. Plaintiffs' Failure to Warn Claim.**

Mr. and Mrs. Short concede their defective warning claim, therefore it is dismissed.

**B. Plaintiffs' Design Defect Claim.**

WCI correctly states that expert testimony is required in order to show defective design where the design considerations are sufficiently complicated and specialized beyond the knowledge and experience of the average layperson. Harkins v. Calumet Realty Co., 614 A.2d 699, 707 (Pa. Super. 1992). WCI contends that the Shorts possess no admissible evidence showing that any aspect of the subject lawn mower was defective because they rely exclusively on the testimony of mechanical engineer Richard A. Colberg ("Colberg"), whose testimony WCI labels "conclusory, uninformed and [not] establish[ing] that the mower in question was defectively designed." (Mem. Law in Support of Def.'s Mot. Summ. J. at 14.) In his report, Colberg concluded that the length of the operator presence control cable and the material that comprises the cable rendered the lawn mower defective. In order to set forth a prima facie case for design defect, the Plaintiffs must provide an alternative feasible design that would have prevented the accident and evidence of the availability of a substitute product that would satisfy the same need without being as unsafe. Surace v. Caterpillar, 111 F.3d 1039, 1046-47 (3d

Cir. 1997); Fitzpatrick v. Madonna, 623 A.2d 322, 324 (Pa. Super. 1993)(citations omitted). Colberg's findings are examined below.

1. Length of the Operator Presence Control Cable.

In Colberg's opinion, the operator presence control cable was longer than necessary and allowed moisture and condensation to collect and corrode the cable, rendering it inoperable. (Colberg Report at 6.) Thus, Colberg opines that the design of the operator presence control bar was defective and was the cause of Mr. Short's injury. Colberg also opines that the cable corrosion caused the engine to fail to stop within three seconds of Mr. Short releasing the operator presence control bar. (Id.) As WCI notes, however, Colberg conceded in his deposition that he had no idea how much time elapsed between the time Mr. Short let go of the mower handle and the time the blade came to a stop. Colberg opined that the elapsed time from when Mr. Short let go of the mower handle and when the mower blade stopped could have happened as quickly as half a second. (Colberg Dep. at 98.) The CPSC regulation for blade stop time for the lawn mower is three seconds. (Colberg Report at 4, Dep. at 29.)

Colberg does not offer a design which would have made the cable non-defective. He did not offer any suggestion as to how long the cable should have been, nor did he perform any further testing of the mower to determine whether it was the appropriate design for the mower. (Colberg Dep. at 73-74.) In fact, he stated that he had no idea what considerations come into

play in designing the length of the lawn mower cable. (Id. at 73-75, 78.) The Plaintiffs claim that all the jury has to do is compare the somewhat shorter throttle cable to the operator presence control cable as "obvious" proof that the cable could have been shorter. (Pls.' Mem. Law in Supp. of Pls.' Resp. to Def.'s Mot. Summ. J. at 11.) Plaintiffs' expert, however, does not know how long the cable should be. WCI suggests that Colberg did not determine how long the cable should have been because he "has at least enough education, experience and background to know that the different functions of the throttle cable and the operator presence control cable require different designs." (Reply in Supp. of Def.'s Mot. Summ. J. at 3.) Because the Plaintiffs have not established that a shorter cable would satisfy the same need as the existing cable, they have not proven that this shorter cable is a safer alternative.

## 2. Cable Material.

WCI also argues that the Plaintiffs' defective design claim must fail with respect to the cable materials because the Plaintiffs provide no alternative feasible design or present a design that they could surmise with any confidence would have prevented this accident. Rather, the Plaintiffs' expert opines that the cable should have been made of corrosion resistant material and, without knowing whether the individual strands of the cable were galvanized, states that "[m]aximum corrosion protection would be obtained if the individual strands were galvanized prior to being wound into cable." (Colberg Report at



6.) Colberg did not state what type of material should be used on the cable, nor did he perform any testing to determine what, if any, material would have made a non-defective cable. (Colbert Dep. at 74-75.)

Without an inspection of the mower or any extensive investigation of the part at issue and without tests or information as to the design of this product, WCI claims that Plaintiffs can present no evidence to support a prima facie claim of a design defect. In response, Plaintiffs' expert concludes that: (1) due to rust and corrosion on the cable the subject lawn mower failed to stop within the regulated three seconds; (2) the operator presence control cable and conduit on the lawn mower is longer than necessary and allowed moisture and condensation to collect and corrode the cable, rendering it inoperable in Mr. Short's emergency; and (3) the rust and corrosion should not have accumulated on the cable had it been properly protected. (Pls.' Mem. Law in Supp. Pls.' Resp. to Def.'s Mot. Summ. J. at 10.)

WCI contends that although Plaintiffs claim the lawn mower is defective because, at some unknown point in time, the cable appeared rusted, they do not know what caused the rusting nor whether the rusting caused the accident involving Mr. Short. (Reply in Supp. Def.'s Mot. Summ. J. at 2.) The Plaintiffs' solution to this alleged "defect" issue is "as simple as a shorter cable and/or corrosive resistant materials than those utilized on this product." (Id. at 2.)(citing Pls.' Mem. Law in Supp. Pls.' Resp. to Def.'s Mot. Summ. J. at 14.) Simply stating

the cable could have been made of better materials and could have been shorter is insufficient and does not aid in determining whether the cable was properly protected.

Plaintiffs argue that had the cable been comprised of individually galvanized strands, this would have prevented the cable's corroded condition. However, Colberg did not know what material the cable was comprised of nor did he know whether it had been galvanized. Plaintiffs also note that WCI's expert confirms that the condition of the cable is "abnormal" and he had no way of "knowing why the cable is rusted." (Pls.' Mem. Law in Supp. Pls.' Resp. to Def.'s Mot. Summ. J. at 11.) Colberg conceded that "maximum corrosion protection would be obtained if the individual strands were galvanized prior to being wound into cable." (Id. at 6.) WCI's expert provided an additional affidavit in which he states that he confirmed with the manufacturer of the cable that the individual strands of the inner cable were galvanized. (Rhinehart Aff. at ¶ 4.) WCI's expert does not know how the cable became rusted. Accordingly, Defendant's Motion for summary judgment is granted with respect to design defects in the operator presence control cable.

**C. Unreasonably Dangerous Product: Azzarello Analysis.**

In the product liability context, the court must decide, as a threshold matter, "whether the evidence is sufficient, for purposes of the threshold risk-utility analysis, to conclude as a matter of law that the product was not unreasonably dangerous, not whether the evidence creates a

genuine issue of fact for the jury." Surace v. Caterpillar, Inc., 111 F.3d 1039, 1049 n.10 (3d Cir. 1997). In addition, courts applying Pennsylvania law must "determine, initially and as a matter of law, whether the product in question is 'unreasonably dangerous.'" Riley v. Becton Dickinson Vascular Access, Inc., 913 F. Supp. 879, 881 (E.D. Pa. 1995)(citations omitted). Otherwise, "[w]ithout a showing of a defect, the supplier of a product has no liability under Section 402(A)." Jordon, 611 A.2d at 1330 (citing Berkebile, 337 A.2d at 899). A determination by this Court whether strict liability applies is necessary under the following seven factor risk-utility analysis:

- (1) the usefulness and desirability of the product - its utility to the user and the public as a whole;
- (2) the safety aspects of a product - the likelihood that it will cause injury and the probable seriousness of the injury;
- (3) the availability of a substitute product which would meet the same need and not be as unsafe;
- (4) the manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility;
- (5) the user's ability to avoid danger by the exercise of care in the use of the product;
- (6) the user's anticipated awareness of the dangers inherent in the product and their avoidability, because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions; and
- (7) the feasibility, on the part of the manufacturer, of spreading the loss of

setting the price of the product or carrying liability insurance.

Fitzpatrick v. Madonna, 623 A.2d 322, 324 (Pa. Super. 1993)

(citing Dambacher by Dambacher v. Mallis, 485 A.2d 408, 423 n.5 (Pa. Super. 1984) and John W. Wade, On the Nature of Strict Tort Liab. for Prods., 44 Miss.L.J. 825, 837-38 (1973)). An examination of each risk-utility factor follows.

1. Usefulness and Desirability of the Product - Its Utility to the User and to the Public.

The utility of the Plaintiffs' walk-behind power motor is the first factor this Court must consider in its "unreasonably dangerous" risk-utility analysis. WCI contends that "[t]he lawn mower is an American icon routinely used by millions of people each day." The Consumer Product Safety Commission ("CPSC") found that "the public need for walk-behind power mowers, which provide a relatively quick and effective way to cut grass, is substantial." 16 C.F.R. § 1205.8(d). The Shorts repeatedly used the lawn mower. Mr. Short acknowledges that he used the mower at least seven times. Thus, the Plaintiffs' repeated use of the walk-behind mower is evidence of its utility.

The Shorts state that the lawn mower is unreasonably dangerous because the operator presence control cable was subject to rust and corrosion within two years of its purchase, despite the alleged use of corrosion fighting material and the cable's encasement in a sheath. Plaintiffs suggest that the alleged latent danger posed by this set of circumstances serves to

outweigh the lawnmower's usefulness. Because the Plaintiffs have not established their case as to design defect, this factor weighs in favor of the Defendant.

2. Safety Aspects.

Merely because "[s]ome injuries may occur does not mean that a [product] is defective." Monahan v. Toro Co., 856 F. Supp. 955, 959 (E.D. Pa. June 30, 1994)(citing Shetterly v. Crown Controls Corp., 719 F. Supp. 385, 400 (W.D. Pa. 1989), aff'd, 898 F.2d 142 (3d Cir. 1990)). The CPSC found that the common injuries with regard to power motors are blade contact and crush injuries to fingers and toes, rather than death or serious disability. See 16 C.F.R. § 1205.8(b). The CPSC further believed that by conforming to the standards enunciated in its regulations, far fewer injuries would occur. Id. at § 1205.8(b)(2).

The Plaintiffs state that the likelihood that the mower will cause injury and the injury will be severe cannot be disputed. They argue that this Court should view the evidence in a light most favorable to them and that the evidence demonstrates that the possibility for serious injury similar to the amputation suffered in the instant matter is beyond refute. (Pls.' Mem. Law in Supp. Pls.' Resp. to Def.'s Mot. Summ. J. at 14.) For support, the Plaintiffs cite a product liability case in which the plaintiff sued a lawn mower manufacturer for defective design

of a "deadman's switch" when his hand was severely injured by the lawn mower blade after the plaintiff turned the mower on its side in order to clear a clump of grass which had adhered to the rotating blade. See Burch v. Sears Roebuck Corp., 467 A.2d 615 (1983). Here, the lawn mower was manufactured to comply with CPSC requirements. Further, the instructions and in the user's manual explain the risk of injury and the need to avoid contact with the mower blade. Thus, the safety aspects of the mower cannot be refuted by the Plaintiffs.

3. Availability of a Safer, Substitute Product.

The proposed alternative design must be "safer overall." Riley v. Becton, 913 F. Supp. at 886. As Defendant points out, Riley stands for the proposition that if the risk of injury is not eliminated by the proposed safety device, then the proposed alternative design is not, in fact, a safer substitute product. (Reply in Supp. of Def.'s Mot. Summ. J. at 8.) Plaintiffs assert that a shorter cable and/or better corrosive resistant materials than utilized on this product could resolve the defect in this case. Further, Plaintiffs claim these substitutes would address the deterioration of the cable in the instant matter within two years of purchase and enable the lawn mower to function properly. According to the Plaintiffs, "these substitute parts are at defendant's disposal and/or within their reach." As WCI notes, however, the Plaintiffs do not identify

the replacement parts to which they refer. Further, the CPSC noted "there are no devices that can completely substitute for walk-behind power mowers." 16 C.F.R. § 1205.8(d). Plaintiffs have not tested a lawn mower with a shorter cable and do not present a single alternative design for the mower. Accordingly, no safer, available substitute lawn mower existed at the time of Mr. Short's accident.

4. Elimination of the Unsafe Character of the Product without Impairing its Usefulness or Making It Too Expensive.

WCI argues that there is no known way to make a product such as a lawn mower 100% safe. Further, Plaintiffs have not suggested any alternative design to prevent injuries or make it mechanically or economically feasible. WCI points to the instructions and product warnings located in the user's manual which explain the risk of injury from blade contact and inform people of the need to avoid the mower blade.

Plaintiffs maintain that the lawn mower would remain useful if the cable in question were shortened. The Plaintiff admits, however, that "it is not clear how the shortening of the cable or the altering of the composition of this one part of the lawn mower would significant [sic] increase the cost of [sic] the manufacturer of this lawn mower so as to render any changes untenable." (Pls.' Mem. Law in Supp. of Pls.' Resp. to Def.'s Mot. Summ. J. at 15.) Thus, this factor weighs in WCI's favor.

5. The User's Ability to Avoid Danger by Exercising Care in the Use of the Product.

This Court must evaluate whether Mr. Short acted as an "ordinary" consumer in avoiding dangers associated with working with lawn mowers. Berkebile, 337 A.2d at 899 n.6. The potential risks are identified and warned about in the Operator's Manual.

Plaintiffs state that they have presented evidence that Mr. Short did not violate the often vague and ambiguous warnings of WCI in the course of his operation of the lawn mower. The Plaintiffs again contend that Mr. Short's footwear was not improper, he avoided mowing the slope in an "up and down" fashion and the Manual fails to provide guidance regarding what condition comprises "a steep slope." Plaintiffs contend that this slope was not excessively steep and attempt to distinguish Mr. Short's use of the lawn mower in a diagonal fashion as different from that which the Manual cautions about.

WCI responds by stating that if an operator follows the instructions and uses a lawn mower in accordance with those instructions, the risk to the Plaintiff will be greatly reduced. Here, WCI contends that Mr. Short did not use the lawn mower in accordance with the instructions.

6. The User's Anticipated Awareness of the Dangers and Their Avoidability.

The Plaintiffs state that people are obviously aware of the dangers associated with a lawn mower, but attempt to



distinguish the instant case by asserting that Mr. Short purchased the lawn mower in reliance on WCI's assertion that the kill switch was a safety feature on which he could depend. The Plaintiffs state that the Owner's Manual did not warn that the kill switch could fail within two years or that the cable should be extracted from its sheath and examined periodically. The Plaintiffs admit, however, that when the Manual did provide warnings, it did so with clear and unambiguous instruction.

WCI states that the potential risks for lawn mowers are expressly identified in and warned about in the Operator's Manual and on the lawn mower itself. They note that Mr. Short appreciated that the blades could injure a body part in its path. (B. Short Dep. at 101-02.) Thus, this factor weighs in WCI's favor.

7. Feasibility on the Part of WCI of Spreading the Loss.

The final risk-utility factor is the feasibility, on the part of WCI, of spreading the loss of a defective lawn mower by setting the price of the mower or carrying liability insurance. Analysis of the previous six risk-utility factors reveals that the lawn mower is not defective. As the Monahan court held, a manufacturer "should not have to spread among its customers the economic loss resulting from injuries from a product that is not defective, and for which the risk of harm can be eliminated by operating the product properly and heeding given

warnings." Monahan, 856 F. Supp. at 964. An examination of this final risk-utility factor is therefore unnecessary.

**D. Plaintiffs' Negligence Claim.**

WCI also moves for summary judgment of the Plaintiffs' negligence claims on the basis that no defect exists. In support of this contention, WCI cites Fitzpatrick, 623 A.2d at 326, wherein the Pennsylvania Superior Court states: "[i]n a negligence case, the plaintiff must prove not only that the product was defective and that the defect caused his injury but in addition that in manufacturing or supplying the product the defendant failed to exercise due care." In this case, the Plaintiffs have not met their burden of proving either that the lawn mower was defective or the Defendant failed to exercise due care in manufacturing or supplying the lawn mower.

However, the Plaintiffs, in order to succeed on their negligence claim, "must establish: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting." Monahan, 856 F. Supp. at 965 (citing Kleinknecht v. Gettysburg College, 989 F.2d 1360, 1366 (3d Cir. 1993) and Griggs v. BIC Corp., 981 F.2d 1429, 1434 (3d Cir. 1992)(citations omitted)). Moreover, "[t]he test of negligence is whether the

wrongdoer could have foreseen the likelihood of harm to the plaintiff resulting from defendant's conduct." Id. (citation omitted). If the risks were foreseeable, the final part of a duty analysis is whether the foreseeable risks were unreasonable. Id. Because Plaintiffs have presented no evidence to rebut WCI's evidence that the lawn mower satisfied all federal regulations and industry standards, WCI's motion is granted with respect to negligence.<sup>7</sup>

#### **E. Spoliation of the Lawn Mower.**

WCI's final argument in support of summary judgment is based upon spoliation of the lawn mower. WCI argues that Mr. Short's conduct in breaking the part of the lawn mower at issue prejudices WCI so that dismissal of this action is the only appropriate remedy. Because this Court has found that Plaintiffs' design defect claims fail, the Court will not address this additional argument.

#### **IV. CONCLUSION.**

Plaintiffs have not sufficiently established that the lawn mower is unreasonably dangerous to justify imposition of

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<sup>7</sup>In a similar fashion as the plaintiffs in Monahan v. Toro Co., 856 F. Supp. 955, 966 n.13 (E.D. Pa. June 30, 1994), the Shorts included in their Complaint an allegation that the lawn mower was not merchantable and not fit for its particular purpose, yet set forth no argument on these breach of warranty claims. I therefore find, as did the Monahan court, that these grounds for relief were abandoned.

liability on WCI. Thus, WCI's Motion is granted.

An Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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BARRY SHORT and JUDY SHORT, h/w,		:	CIVIL ACTION
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RICHEL HOME CENTER,		:	
		:	
Defendants.		:	
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ORDER

AND NOW, this 2nd day of November, 2000, upon consideration of the Motion of Defendant, WCI Outdoor Products, Inc., for Summary Judgment and all Responses and Replies thereto, it is hereby ORDERED and DECREED that Defendant's Motion is GRANTED.

BY THE COURT:

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Robert F. Kelly,	J.